



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1996

Mr. J.R. Fawcett
Chief of Police
City of Farmers Branch
P.O. Box 819010
Farmers Branch, Texas 75381-9010

OR96-1430

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100398.

The City of Farmers Branch (the "city") received a request for the following:

- 1) A copy of the Arrest Report and all supplements, including any Offense Reports and supplements generated concerning the arrest of Edward Lee Jones on and about 2/23/96.
- 2) A copy of any 911 calls, radio transmissions, on all channels, computer generated transmissions, concerning the accident/arrest of Edward Lee Jones on and about 2/23/96.

You have submitted the requested information to this office for review. The Dallas County District Attorney is currently prosecuting Edward Lee Jones for driving while intoxicated on February 23, 1996. You contend that the requested information, all of which relates to this incident, is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative

recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The request for information is dated May 9, 1996. You have not indicated the date on which the city in fact received the request for information. However, the city did not request a decision from this office until June 5, 1996, presumably more than ten days after the city received the request. Therefore, unless information is confidential by law or other compelling reasons exist as to why the information should not be made public, you must release the information.¹ Open Records Decision No. 195 (1978). See also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). We note the presence of criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") in the documents submitted to us for review. CHRI is deemed confidential by federal and state law.² Thus, compelling reasons exist to withhold the CHRI from disclosure. In the absence of a demonstration that compelling reasons exist to withhold the remainder of the requested information, you must release the remainder of the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹Sections 552.103 and 552.108 are discretionary exceptions that can be waived by governmental bodies. You have waived these sections by failure to timely submit your request to this office. See Open Records Decision Nos. 541(1990) (section 552.103 is discretionary exception), 216 (1978) (section 552.108 is discretionary exception).

²The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 100398

Enclosures: Submitted documents

cc: Mr. Mike Christopher
P.I.C. Investigations
P.O. Box 13087
Arlington, Texas 76094
(w/o enclosures)